ASSEMBLY BILL No. 1681

Introduced by Assembly Member Houston

February 23, 2007

An act to add and repeal Section 6377 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

legislative counsel's digest

AB 1681, as introduced, Houston. Sales tax exemptions: manufacturing equipment: telecommunications equipment: electrical generation equipment.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property, and provides various exemptions from the taxes imposed by that law.

This bill would provide, for calendar years beginning on or after January 1, 2008, an exemption from those taxes for the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property, as defined, purchased for use by a qualified person, as defined, engaged in the manufacturing, processing, refining, fabricating, or recycling of property, as specified. This bill would not become operative until the State Budget deficit for the 2008–09 fiscal year is eliminated, and would remain in effect for 7 calendar years thereafter.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6377 is added to the Revenue and Taxation Code, to read:

6377. (a) For each calendar year beginning on or after January 1, 2008, there shall be exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following:

(1) Tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered property to its completed form, including packaging, if required.

(2) Tangible personal property purchased for use by a qualified person to be used primarily in research and development.

(3) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in paragraph (1), (2), or (3).

(4) Tangible personal property purchased for use by a qualified taxpayer to be used primarily in the telecommunications industry.

(5) Tangible personal property purchased for use by a contractor purchasing that property either as an agent of a qualified person or for the contractor's own account and subsequent resale to a qualified person for use in the performance of a construction contract for the qualified person who will use the tangible personal property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with the manufacturing process.

(b) This exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing.

(c) For purposes of this section:

(1) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(4) (A) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted.

(B) Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(5) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(6) "Qualified person" means any person that is primarily engaged in:

(A) Manufacturing activities that are described in Sector 31-33 of the North American Industry Classification System Manual published by the United States Office of Management and Budget, 1997 edition.

(B) Telecommunications activities that are described in Codes 513310 to 513390, inclusive, of the North American Industry Classification System Manual published by the United States Office of Management and Budget, 1997 edition.

(C) Electrical generation activities, for commercial use, that are described in Codes 22111 to 221122, inclusive, of the North American Industry Classification System Manual published by the United States Office of Management and Budget, 2002 edition.

(7) "Recycling" means using, reusing, or reclaiming a recyclable material to produce new or recycled property.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations promulgated under that section.

(10) "Tangible personal property" shall not include any of the following:

(A) Consumables with a normal useful life of less than one year, except as provided in subparagraph (E) of paragraph (11).

(B) Furniture, inventory, equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing process.

(11) "Tangible personal property" shall include, but shall not be limited to, all of the following:

(A) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party.

(C) Property used in pollution control that meets or exceeds standards established by this state or any local or regional governmental agency within this state.

(D) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, or fabricating process, or that constitute a research or storage facility used during the manufacturing process. Buildings used solely for warehousing purposes after completion of the manufacturing process shall not be included.

(E) Fuels used or consumed in the manufacturing process.

(F) Property used in recycling.

(d) No exemption shall be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instruction or regulation as the board may prescribe, and the retailer subsequently furnishes the board with a copy of the exemption certificate. The exemption certificate shall contain the sales price of the machinery or equipment that is exempt pursuant to subdivision (a).

(e) Notwithstanding the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(f) (1) Notwithstanding subdivision (a), the exemption provided by this section shall not apply to any sale or use of property that, within one year from the date of purchase, is either removed from California or converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption.

(2) The exemption established by this section shall not apply with respect to any tax levied pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the Constitution.

(g) If a purchaser certifies in writing to the seller that the property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and within one year from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not qualifying for the exemption, or (3) uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

(h) This section shall apply to a lease of tangible personal property classified as a “continuing sale” and “continuing purchase” in accordance with Sections 6006.1 and 6010.1. The exemption established by this section shall apply to the rentals payable pursuant to a lease, provided the lessee is a qualified person and the property is used in an activity described in subdivision (a). Rentals that meet the foregoing requirements shall be eligible for the exemption for a period of six years from the date of commencement of the lease. At the close of the six-year period from the date of commencement of the lease, lease receipts shall be subject to tax without exemption.

(i) Notwithstanding any other provision of this section to the contrary, this section shall not become operative until, and shall not apply to any purchases made before, January 1 of the first fiscal year in which the State Budget deficit for the 2008–09 fiscal year is eliminated.

(j) This section shall remain in effect only for seven calendar years after this section first becomes operative, and is repealed on January 1 of the first year thereafter.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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